

SENATE BILL 2864
By Cohen

AN ACT to amend Tennessee Code Annotated, Title 68, relative to
adult health care centers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, is amended by adding Sections 2
through 16 as a new chapter:

SECTION 2. As used in this chapter, unless the context otherwise requires:

- (1) "Department" means the department of human services;
- (2) "Commissioner" means the commissioner of the department of human services;
- (3) "Adult day health care" means services to adult recipients pursuant to an
individualized plan of care designed to maintain or restore each recipient's
optimal capacity for self-care; and
- (4) "Adult day health care center" means a facility which provides adult day health
care services.

SECTION 3. No person or public agency within this state shall provide adult day health
care in this state, without first obtaining a license therefor as provided in this chapter.

SECTION 4. The department, prior to issuing a new license, shall secure from an
appropriate law enforcement agency records of any criminal activity, other than minor traffic
violations, of the administrator, program director, and fiscal officer of the proposed adult day

health care center. The state department shall obtain the records each time these positions are to be filled. A past conviction of any crime, especially any crime involving misuse of funds or involving physical abuse shall, in the discretion of the department, be grounds for denial of a license.

SECTION 5. If an adult day health center is operated only by a city or county or by a nonprofit corporation, no part of the net earnings may lawfully inure to the benefit of any private shareholder or individual. An applicant for initial licensure as an adult day health center shall file with the department, pursuant to its regulations, an application on forms furnished by the department, which shall include, but not be limited to, the following:

- (a) Evidence satisfactory to the department that the applicant, its directors, and officers, if the applicant is a nonprofit corporation, and the person designated to manage the day-to-day affairs of the proposed adult day health center are of reputable and responsible character.

- (b) Evidence satisfactory to the department of the ability of the applicant to comply with the provisions of this chapter and of rules and regulations adopted pursuant thereto by the department.

- (c) Such other information as may be required by the department for the proper administration and enforcement of this chapter.

SECTION 6. The department shall be authorized to issue provisional licenses.

- (a) If a licensed adult day health center or an applicant for a license has not been previously licensed, the department may only issue a provisional license to the center as provided in this chapter.

- (b) A provisional license to operate an adult day health center shall terminate one (1) year from the date of issuance.

- (c) Within thirty (30) days prior to the termination of a provisional license, the state department shall give the adult day health center a full and complete inspection, and, if the adult day health center meets all applicable requirements for licensure, a

regular license shall be issued. If the adult day health center does not meet the requirements for licensure but has made substantial progress towards meeting the requirements, as determined by the department, the initial provisional license shall be renewed for six (6) months.

(d) If the state department determines that there has not been substantial progress towards meeting licensure requirements at the time of the first full inspection provided by this section, or, if the department determines upon its inspection made within thirty (30) days prior to the termination of a renewed provisional license that there is lack of full compliance with the requirements, no further license shall be issued.

(e) If an applicant for a provisional license to operate an adult day health center has been denied by the department, the applicant may contest the denial by filing a contested case proceeding. The proceeding to review the denial shall be conducted pursuant to the Uniform Administrative Procedures Act of Tennessee Code Annotated, Title 4, Chapter 5.

(f) The department shall not apply less stringent criteria when granting a provisional license pursuant to this section than it applies when granting a permanent license.

SECTION 7. (a) The department may issue a provisional license to an adult day health center only if:

(1) The adult day health center and the applicant for licensure substantially meet the standards specified by this chapter and regulations adopted pursuant to this chapter;

(2) No violation of this chapter or regulations adopted under this chapter exists in the adult day health center which jeopardizes the health or safety of patients;

(3) The applicant has adopted a plan for correction of any existing violations which is satisfactory to the state department.

(b) A provisional license issued under this section shall expire not later than one (1) year after the date of issuance, or at an earlier time as determined by the state department at the time of issuance, and may not be renewed.

(c) The department shall not apply less stringent criteria when granting a provisional license pursuant to this section than it applies when granting a permanent license.

SECTION 8. No applicant which is licensed as a health facility, community care facility, or clinic may be issued a license for an adult day health care center while there exists a subsisting, uncorrected violation of the statutes or regulations relating to such license.

SECTION 9. Each applicant for a new license or renewal submitted to the state department shall be accompanied by an annual fee of five hundred dollars (\$500).

SECTION 10. Each license issued or renewed pursuant to this chapter shall not be transferable and the initial license shall expire twelve (12) months from the date of its issuance. The commissioner shall be given the discretion to approve applications for relicensure for a period of up to twenty-four (24) months. An application for annual renewal of a license, accompanied by the required fee, shall be filed with the department not less than thirty (30) days prior to the expiration date. Failure to submit a renewal application prior to such date shall result in expiration of the license.

SECTION 11. Immediately upon the denial of any application for issuance or renewal of a license, the department shall notify the applicant in writing. Not later than ten (10) days after the department mails the notice, the applicant may submit a written petition for a hearing to the department. Upon receipt by the department of the petition in proper form, such petition shall be set for hearing. The hearing shall be held within sixty (60) calendar days of receipt of the petition. The proceedings shall be conducted in accordance with the Uniform Administrative Procedures Act, in Title 4, Chapter 5, with the department having all the powers granted therein to ensure:

(a) Compliance with regulations adopted pursuant to this chapter;

- (b) Continued demonstrated community need;
- (c) Conformity of the program to individual participant's assessed and reassessed needs and interests with particular attention to visual, auditory, and equipment needs;
- (d) Suitability of program changes to the community and participants served; and
- (e) Compliance with requirements of law pertaining to fire and life and safety.

SECTION 12.

(a) The department may conduct inspections of every licensed facility. The evaluation method adopted by the department shall be published and distributed to all licensed adult day health centers and all other interested persons.

(b) Any duly authorized officer, employee, or agent of the department may, upon presentation of proper identification, enter and inspect any place providing adult day health care at any time, with or without advance notice, to secure compliance with, or to prevent a violation of, any provision of this chapter or any regulation adopted hereunder.

(c) The department shall make available to all interested persons a list of all licensed adult day health centers and the services that each facility provides. Reports on the results of each inspection, evaluation, or consultation performed pursuant to this section shall be kept on file in the department, and all inspection reports, consultation reports, lists of deficiencies, and plans of correction shall be open to public inspection.

SECTION 13.

(a) The department shall require each adult care center to have a governing board. The governing board of an adult day health center, having final authority and responsibility for conduct of the center, shall be comprised of four (4) or more persons, at least one-half (1/2) of whom shall be recipients of the services of the adult day health center, relatives of such recipients, or representatives of community organizations with particular interest in programs for the elderly. No member of the governing board or such

a special board, nor any member of the immediate family thereof, shall have any direct or indirect interest in any contract for supplying services to the adult day health center.

(b) The department shall, in individual cases, grant exceptions from the requirements of this section for applicants which are also licensed as a health facility, clinic, or community care facility if:

(1) the applicant delegates primary responsibility for supervision of its adult day health program to a special board meeting the compositional requirements of this section; and

(2) such special board reviews and recommends to the governing board of the health facility the budget, personnel, and subcontractors of the adult day health care program.

SECTION 14. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 15. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 16. The provisions of this act are declared to be remedial in nature and the provisions of this act shall be liberally construed to effectuate its purposes.

SECTION 17. This act shall take effect upon becoming a law, the public welfare requiring it.